the one entitled in his or her own right to the recovery when had, and those where the party entitled to and does so in a representative capacity. The Stewart case is held to apply to the second class only, and, while it is admitted that there may be technical objections to applying the *lex fori* in such a case, the infinitely greater convenience in allowing the trustee entitled under the *lex fori* to proceed is grounds for disregarding the rule of private international law in that one narrow case. For the Stewart case to apply, then, the beneficiaries under both statutes must be the same, and under both, they must seek redress through a trustee of some sort. No one can possibly be prejudiced, except perhaps the logicians.

J. F. H.

LIQUOR LAWS OF PENNSYLVANIA—RETAIL LICENSE—NECESSITY—In the administration of the Brooks High License Law, which now regulates the sale of intoxicating liquors in Pennsylvania, no subject seems to have been more productive of difference of opinion and practice than the interpretation of the powers and duties conferred upon the Courts of Quarter Sessions of the various counties in the granting or refusing of licenses. The pivotal point of difference seems to lie in the question of "necessity", as involved in the regulatory statute. The statute provides that "the said Court of Quarter Sessions shall hear petitions . . . in favor of and remonstrances against the application for such license, and in all cases shall refuse the same whenever, in the opinion of the said court, having due regard to the number and character of the petitioners for and against such application, such license is not necessary for the accommodation of the public and entertainment of strangers and travelers".[1] It is clear that the act places the determination of the question of necessity within the discretion of the Court of Quarter Sessions and the appellate courts of the State have so held. In the recent case of *Gohn's License*[2] the order of the Court of Quarter Sessions refusing a license on the ground of lack of necessity was sustained, even though no remonstrances were filed against the application.

The leading case dealing with the question of necessity is that of *Schlaudecker* v. *Marshall*.[3] It is true that that case involved the interpretation of an earlier act than the one now in force; but the question of necessity was not changed by the later statute now controlling, so the decision of the court in the case mentioned is still applicable.[4] The Supreme Court, speaking through Mr. Justice Agnew, said:

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[1] Act of May 13, 1887, P. L. 108, §7.

[2] 57 Pa. Super. Ct. 160 (1914).

[3] 72 Pa. 200 (1872).

[4] *Cf.* Act of March 22, 1867, P. L. 40, §1.

> "The discretion vested in the court is a sound judicial discretion; and to be a rightful judgment it must be exercised in the particular facts and circumstances before the court, after they have been heard and duly considered; in other words, to be exercised upon the merits of each case."

This interpretation of the powers conferred upon the Court of Quarter Sessions in granting licenses has been subsequently approved by both the Supreme and Superior Courts of the Commonwealth.[5] It being clear that the question of necessity is for the sound judicial discretion of the court, there remains the important question of determining what things shall control or influence such discretion. The act itself provides one method whereby the court may seek aid in this problem. It stipulates that the court shall hear petitions in favor of and remonstrances against the applications for licenses. These are not conclusive on the court, however.[6] They are for the information of the conscience of the court and for the sole purpose of determining whether the license in question is, or is not, a matter of public necessity.[7] It is not necessary that the petitioners and remonstrants should be voters; it is enough that they be citizens, whether male or female.[8] But such methods of determining the question of necessity are not compulsory on the court. In exercising its judicial discretion the court may act of its own knowledge and refuse a license, even though there is no remonstrance against it.[9] But if the court is without knowledge other than by the petition of the applicant, and there is no remonstrance, it would seem that the license must be granted.[10]

There has been considerable diversity of opinion among the courts of the State as to whether the term necessity refers to the license itself or to the hotel or eating house in connection with which the license is sought. But the Superior Court has distinctly said that not every place that may be necessary as a hotel or eating house for public accommodation is entitled as matter of right to be licensed to sell liquors if the other statutory requirements are complied with.[11]

The refusal of a license because of lack of necessity does not make the question of necessity *res judicata* upon the hearing of the

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[5] Reed's Appeal, 114 Pa. 452 (1886); Raudenbusch's Petition, 120 Pa. 328 (1888); Sparrow's Petition, 138 Pa. 116 (1890); Reznor Hotel Company's License, 34 Pa. Super. Ct. 525 (1907).

[6] Sparrow's Petition, *supra,* note 5.

[7] Reed's Appeal, *supra,* note 5.

[8] Reed's Appeal, *supra,* note 5.

[9] Raudenbusch's Petition, *supra,* note 5; Mitchell's License, 48 Pa. Super. Ct. 406 (1911); Gohn's License, 57 Super. Ct. 160 (1914).

[10] Kelminski's License, 164 Pa. 231 (1894).

[11] Reznor Hotel Company's License, *supra,* note 5; Raudenbusch's Petition, *supra,* note 5.

application of the same person for the same premises in a subsequent year; but the court may consider it in connection with the other relevant facts established at the hearing or known to the court, particularly if the conditions be unchanged.[12] The grant of a license for the same premises during the previous year or for several preceding years is a fact more often in evidence, since the great majority of applications are for renewals. The appellate courts seem not to have expressly determined the weight to be given to such evidence. In one case the Superior Court said that "the granting or refusal of license in previous years is not conclusive, and, under some circumstances, it ought to have little, if any, weight in the determination of the application before the court".[13] Among the Courts of Quarter Sessions there is a diversity of opinion as to the weight which should be given to the fact that an application is for a renewal. Some courts have said that the fact that a place has been heretofore licensed is prima facie evidence of its necessity.[14] But the better opinion, in view of the fact that the statute in question is an act "to restrain and regulate the sale of liquors" would seem to be that enunciated by Judge Hare, who held that "every renewal is a new grant and the applicant must make out his case with the same precision whether he is coming for the first or the twentieth time."[15]

When the Court of Quarter Sessions has heard or decided an application its whole duty is performed and it is not required to give the reasons for its decision.[16] Being an exercise of its judicial discretion, the finding of the court hearing an application will not be considered on appeal.[17] Upon appeal the presumption arising from a regular record is that the court below refused the license for a legal, and not for an arbitrary reason;[18] and this presumption cannot be rebutted by an argument from the evidence that the court ought to have reached a different conclusion.[19]

It seems clear, therefore, that the grant of a license to sell intoxicating liquors depends primarily upon the question of whether such license is necessary for the accommodation of the public and the entertainment of strangers and travelers; that the determination of this question rests exclusively in the sound judicial discretion of the court to which application for a license is made; that for

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[12] Reznor Hotel Company's License, *supra,* note 5.

[13] Reznor Hotel Company's License, *supra,* note 5.

[14] *In re* Rief's License, 2 Leh. V. 400 (1887); Howell's Application, 10 Pa. Dist. Rep. 504 (1901).

[15] Eick's License, 17 Pa. C. C. 50 (1895).

[16] Kilgore & Company's License, 13 Pa. Super. Ct. 543 (1900).

[17] Reed's Appeal, *supra,* note 5; Raudenbusch's Petition, *supra,* note 5; Nolan's License, 47 Pa. Super. Ct. 551 (1911); Mitchell's License, *supra,* note 9.

[18] Shearer's License, 26 Pa. Super. Ct. 34 (1904); Mitchell's License, 48 Pa. Super. Ct. 406 (1911).

[19] McCrory's License, 31 Pa. Super. Ct. 192 (1906).

the information of its conscience, the court may hear petitions for and remonstrances against the granting of a particular license, but not necessarily, as it may act of its own knowledge; that the term "necessity" refers to the license to sell liquors, and, by the better view is to be considered in each case *de novo,* whether the application be for a new license or for a renewal; that since the act is an act "to restrain and regulate" the sale of liquors and directs the court to "refuse" the license when it is not necessary, the burden is on the applicant to establish such necessity to the satisfaction of the judicial discretion of the court.

R. M. G.

NEGLIGENCE—LIABILITY OF WATER COMPANIES IN CASE OF FIRE—It is a general rule of wide application that a municipality is not liable for property destroyed by fire on account of its failure to furnish an adequate supply of water.[1] When a municipal corporation undertakes to furnish water to be used as a protection against fire, it acts in a governmental capacity, and is no more responsible for failure in that respect than it would be for failure to furnish adequate police service.[2] But a problem of much difficulty arises in relation to hydrant supply to a city for extinguishment of fires when there is a contract between the water-works and the municipality in which it is provided that a certain pressure shall be maintained. In a late case in the Supreme Court of Canada,[3] there was a suit by a householder in a municipality against the water company supplying the district, *seeking* to recover damages in his own right for the failure to supply sufficient water to extinguish the fire which destroyed his premises. By its contract with the municipality the water company undertook to maintain a defined water pressure for fire purposes. The court held that no right of action arose out of such a contract in favor of the taxpayer.

The great majority of American courts hold that the taxpayer has no direct interest in such agreements and, therefore, cannot sue in contract.[4] Neither can he sue in tort, because in the absence of a contract obligation to him, the water company owes him no duty for the breach of which he can maintain an action.[5] But in Kentucky, North Carolina and Florida the courts have reached a different con-

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[1] Tainter v. Worcester, 123 Mass. 311 (1877); Wendel v. City of Wheeling, 28 W. Va. 233 (1886).

[2] German Alliance Insurance Company v. Home Water Company, 226 U. S. 220 (1912).

[3] Belanger v. Montreal Water & Power Co., 50 Can. Sup. Ct. 356 (1914).

[4] Wainwright v. Queen County Water Co., 78 Hun, 146 (N. Y. 1894); House v. Houston Water Works Co., 88 Tex. 233 (1895); Thompson v. Springfield Water Company, 215 Pa. 275 (1906).

[5] Nicherson v. Bridgeport Hydraulic Co., 46 Conn. 24 (1878); Fitch v. Seymour Water Works, 139 Ind. 214 (1894).